



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/156096

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed March 14, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on July 08, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's cost share.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

|

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Chris Sobczak  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On December 2, 2013, the Petitioner submitted a renewal application for the Family Care program. Petitioner's application reported out-of-pocket medical expenses of \$100/month for prescriptions and office visits plus \$25/year for over the counter medications. The application also reported the Petitioner's rent expense of \$690/month, telephone expense of \$29.60/month,

electric utility expense of \$39.99/month and a Medicare premium of \$99.90/month. Petitioner also submitted an insurance statement indicating that she pays \$9.83/month for homeowner's insurance. No medical remedial expense form was submitted with the application.

3. Petitioner has monthly income of \$1,515.27 which includes \$1,283 from Social Security and a pension of \$232.27.
4. On December 16, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her cost share for the Family Care program is \$234.28/month effective January 1, 2014.
5. On January 7, 2014, the Petitioner submitted a medical remedial expense form. It reported expenses of \$254.50/month including \$17.50/month for co-pays and \$237/month for "hospital bill – Orthopaedic Associates of Milwaukee."
6. On February 19, 2014, the Petitioner submitted receipts from Consumer Credit Counseling Service (CCCS) for \$237/month and a periodic report of Petitioner's transactions with CCCS. The report indicates that CCCS made payments totaling \$237/month to Sam's Club Discover, Chase Bank (2 accounts), Sears Payment Center and Sam's Club. The \$237/month also includes a CCCS fee of \$21/month.
7. On May 5, 2014, the agency issued a Notice of Decision to the Petitioner informing her that her cost share for the Family Care program is \$224.45/month effective January 1, 2014. This is due to an agency error in not previously including the Petitioner's homeowner's insurance in the calculation of the cost share.

### **DISCUSSION**

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized under Wisconsin Statute, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. See also Medicaid Eligibility Handbook (MEH), Chapter 29, available at [www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm](http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm).

A person who receives both a Medical Assistance card and FCP, and is not on "regular MA" because of excess income, is classified as being in Group A, Group B, or Group C. Group B status is available to a person who has gross income below the Community Waivers MA income limit that currently is \$2,130. MEH, §39.4.1. Petitioner is in Group B.

A Group B recipient must pay a cost share based upon income and certain expenses. Wis. Admin. Code, §DHS 10.34(3)(b) provides that cost of care is determined by taking the institutionalized person's income, then making several deductions. The first deduction is a personal needs allowance as provided under 42 C.F.R. §435.726(c), if the person is an FCP recipient. That personal needs allowance currently is \$890, as set out in the MA Handbook, App. 39.4.2. Another deduction is special housing expenses. MA Handbook, App. 28.8.3.1. A third deduction is for out-of-pocket medical/remedial expenses. MEH, §15.7.3.

Medical expenses are anticipated incurred expenses for services or goods that have been prescribed or provided by a professional medical practitioner. The expense must be for diagnosis, cure, treatment, or prevention of disease or for treatment affecting any part of the body. These are expenses that are the responsibility of the member, and cannot be reimbursable by any other source, such as Medicaid, private insurance, or employer. MEH, § 15.7.3.

In order to use the medical/remedial expense as an income deduction in the cost share calculation, the expense must meet the following criteria:

1. The individual must be legally liable for payment of the incurred medical/remedial expense. Any portion that will be paid by a legally liable third party such as private health insurance, Medicare, Medicaid, etc. cannot be allowed as a deduction; and
2. The individual must provide verification of the allowable expense.

MEH, §§ 15.7.3, 27.7.8 and 28.8.3.5.

In the previous two years, the Petitioner submitted a similar medical remedial expense form reporting \$237/month in expenses based on her payments to CCCS. The Petitioner testified that a number of years ago she incurred medical expenses which she paid via a number of credit cards. She then had those expenses consolidated with CCCS and pays \$237/month to pay off the various credit cards.

The agency testified that it improperly accepted the Petitioner's medical remedial expense form in previous years without verification that the expense is related to medical care. It relies on the above-cited policies which require verification to allow a medical remedial expense as an income deduction.

The Petitioner has been unable to get further verification to supply to the agency. She stated that she discarded the paperwork regarding the expenses when she moved. She has attempted with the help of the CMO to get itemized credit card statements. She has been told that because her accounts were closed a number of years ago, they are unable to provide the itemized statements. She cannot remember the particular providers and thus has not attempted to obtain any medical records or billing statements to support the expense. She has spoken with an attorney who may be able to assist her. I note that the Petitioner's medical remedial expense form also contained a report of \$17.50/month in co-pays but no evidence was presented to support that expense either.

The removal of medical remedial expenses from the cost share calculation is the sole reason for the increase in the Petitioner's cost share. Without any additional verification that the \$237/month payments are related to medical expenses, I must conclude that the agency has properly calculated the Petitioner's cost share without any medical remedial expense deduction. The Petitioner was informed that she can continue to work on finding paperwork to verify that the \$237/month is a medical remedial expense and she should submit that information to the agency.

### **CONCLUSIONS OF LAW**

The agency properly calculated the Petitioner's cost share as \$224.45/month effective January 1, 2014.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

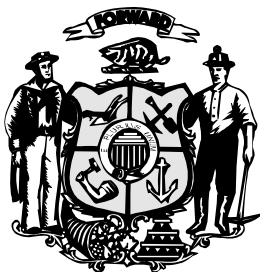
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 14th day of July, 2014

---

\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 14, 2014.

Milwaukee Enrollment Services  
Office of Family Care Expansion